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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appln. No. : 09/684,173 Confirmation No. 3692
Appellant : James R. Kittrell
Filed : October 6, 2000
TC/A.U. : 1711
Examiner : T. T. Tran

Docket No. : 00-625
Customer No.: 34704

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

REPLY BRIEF

Dear Sir:

This paper is in response to the Examiner's Answer mailed January 5, 2004.

Contrary to the Examiner's assertion set forth on Page 3, last 4 lines thereof, Kramer does not teach a catalyst comprising a combination of silica, titania, tungsten oxide, and platinum on column 37, lines 2-20. While each one of silica, titania, tungsten oxide and platinum are mentioned in this portion of the Kramer patent, the formulation as claimed in independent claim 27 is not disclosed in the Kramer patent. The Examiner's attention is drawn to American Hospital Supply Corp. v. Travenol Laboratories, Inc. 745 F2d 1, 223 USPQ 577 (Court of Appeals, Federal Circuit, 1984). In reaching a decision of non-anticipation and non-obviousness, the Federal Court set forth the following:

"While Ghadimi discloses a formulation using all of the 19 amino acids in the Fischer patent, it does not disclose any amino acid formulation that meets the asserted

claims. There is no identity of invention. Thus, we conclude...that the asserted claims of the Fischer patent are not anticipated by Ghadimi..."

The language employed by the Court of Appeals for the Federal Circuit is particularly relevant in the instant case. The formulation of the catalyst of claim 27 on appeal is not disclosed by the Kramer '749 patent. While the Kramer '749 patent may list the individual compounds and the platinum claimed in independent claim 27, a formulation of these three compounds (silica, titania and tungsten oxide) and platinum is not disclosed. Accordingly, it is submitted that the rejection by the Examiner under 35 USC 102(e) is improper. Likewise, the rejection under 35 USC 103(a) as being obvious over the Kramer '749 patent is improper. Claim 27 sets forth a specific formulation having specific amounts of the compounds silica, titania, tungsten oxide as well as platinum. As noted above, this specific formulation is not taught by the '749 patent. It is further submitted that the formulation as claimed in independent claim 27 is not rendered obvious by the '749 patent. When one reads the '749 patent, one is struck by the fact that the thrust of the invention of the '749 patent deals with a mixture for hydroprocessing hydrocarbon feed stream wherein the catalyst mixture is disclosed as a generic catalyst mixture with a thrust of the invention being drawn to differing densities, particle sizes and shapes in order to affect movement of the catalyst in a reactor vessel. Kramer discloses a general

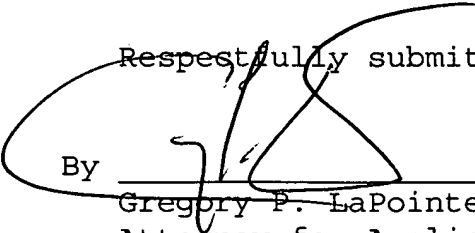
catalyst with extremely broad compositional ranges, for example, in column 36, line 63 as an inorganic support which may include zeolites and organic oxides such as silica, alumina, magnesia, titania and mixtures thereof or any of the inorganic oxides of Group II, III or VI. This indeed represents a very large fraction of the periodic table and teaches nothing specifically with regard to the formulation of independent claim 27. Accordingly, as the Court of Appeals of the Federal Circuit found non-obviousness in the American Hospital Supply Corp. case (supra), the Honorable Board of Appeals must find non-obviousness in the case at hand and reverse the Examiner's rejection.

In light of the foregoing, Appellant respectfully requests the Honorable Board of Appeals to reverse the Examiner's rejection of claims 27 and 28 under 35 USC 102(e) as anticipated by or, in the alternative, under 35 USC 103(a) as being obvious over Kramer et al. (US Patent 6,086,749).

If any additional fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

Respectfully submitted,

By


Gregory P. LaPointe
Attorney for Applicant
Reg. No. 28,395

Date: March 5, 2004

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on March 5, 2004.


Lori J. Larson